BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

REPLY COMMENTS

of

MID-RIVERS TELEPHONE COOPERATIVE, INC., AND CABLE & COMMUNICATIONS CORPORATION, D/B/A MID-RIVERS COMMUNICATIONS

ON SECTIONS XVII.L-R (INTERCARRIER COMPENSATION ISSUES) OF THE *USF/ICC TRANSFORMATION ORDER* FNRPM

Submitted March 30, 2012

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I. EXECUTIVE SUMMARY

Mid-Rivers Communications, a rural telecommunications cooperative serving nearly 30,000 square miles of Eastern and Central Montana, hereby submits for the Federal Communications Commission's (FCC's) consideration Reply Comments with regard to proposed Intercarrier Compensation (ICC) reforms in the above-referenced Dockets.

Mid-Rivers agrees with the Comments of the Rural Associations[1] in that the FCC must undertake a "careful evaluation of end-user impacts and the cost recovery implications of ICC reform, together with a well-defined, sufficient, and predictable transition," before proceeding with any of the additional ICC reforms proposed in Sections XVII.L-R of the FNPRM. It is abundantly clear from the record in this proceeding that there will be detrimental impacts on end-user customers in many areas as the ICC reforms already approved by the FCC are implemented. Approving additional drastic ICC reforms before the impacts of the initial overhauls can be determined is irresponsible at best. **The FCC must create true pause points in its implementation of these unprecedented reforms or risk irreparable harm to rural consumers that will only be compounded with each new step along the ICC reform path.** We present in these Reply Comments specific information regarding the significant impacts of ICC reforms, both approved and proposed, on our company and our customers.

[1] *Initial Comments of the National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and the Western Telecommunications Alliance on Sections XVII.L-R (Intercarrier Compensation Issues)* submitted February 24, 2012.

As both an incumbent Rural Local Exchange Carrier (RLEC) and a Competitive Local Exchange Carrier (CLEC), the impacts on Mid-Rivers Communications of the ICC reforms, both approved and proposed, are numerous and significant. As these access charge transitions take place over the next several years, the negative revenue impact on our RLEC and CLEC operations will be measured in *millions* of dollars, a very significant revenue loss for a company of our size which will be very damaging to our ability to continue building out broadband in our high-cost service areas. The phase-down of ICC revenues will place a much greater cost recovery burden on the backs of our rural end-user RLEC and CLEC customers.

In these Reply Comments, we focus primarily on our specific ICC revenue loss and recovery mechanism concerns as a CLEC, and why the FCC should consider not only halting further ICC reforms at this time but also clarifying ICC reforms already approved in the *USF/ICC Transformation Order*. We also urge the FCC to halt the transition of any additional ICC rate elements to bill-and-keep until the effects of phasing down terminating access rates can be adequately assessed. Finally, we reiterate on-going concerns with reforming all USF and ICC *distribution* mechanisms in the absence of meaningful USF *contribution* reform.

II. BACKGROUND ON MID-RIVERS COMMUNICATIONS

Mid-Rivers Communications provides telephone, broadband, wireless, and other telecommunications services to a vast geographic area in Eastern and Central Montana. We serve 27 ILEC exchanges covering approximately **30,000 square miles,** with an average population density of approximately **0.8 people per square mile**. Following the enactment of the Communications Act of 1996, which for the first time allowed competitive providers to build out in and receive support for the provision of telecommunications services, Mid-Rivers responded to the needs of multiple Montana communities **previously underserved** by the incumbent Price Cap carrier and became a **facilities-based CLEC** in seven Montana Price Cap exchanges. Mid-Rivers now serves as much as 98% of the telephone subscribers in some of these exchanges. We provided broadband services in many of these areas before it was available from the Incumbent provider, and **today we remain the ONLY wireline broadband provider in all but three of these CLEC exchanges**.

Mid-Rivers Communications currently serves about 25,000 telephone access lines, 15,000 high-speed Internet subscribers, and 4,000 cellular phones between our ILEC and CLEC operations. We operate over 10,000 route miles of telephone line and 1,500 miles of fiber optic cable. ICC currently makes up a greater portion of Mid-Rivers' RLEC and CLEC revenues than USF.

III. COMMENTS ON INTERCARRIER COMPENSATION (ICC) SECTIONS OF FNPRM

A. *Reforms are proceeding at an unprecedented rate and must be slowed or halted until the impacts on rural end-user customers can be fully determined and addressed*

Many of the reforms proposed in the FNPRM would reverse the progress Mid-Rivers has made both as a Rural Local Exchange Carrier (RLEC) and a Competitive Local Exchange Carrier (CLEC) in building out quality voice and broadband services to unserved and underserved areas of rural Montana, and could effectively halt any future ability we may have to continue building out to remaining unserved areas. Mid-Rivers agrees with the Comments of the Rural Associations[2], specifically that the FCC must undertake a "careful evaluation of end-user impacts and the cost recovery implications of ICC reform, together with a well-defined, sufficient, and predictable transition," before proceeding with any of the additional ICC reforms proposed in Sections XVII.L-R of the FNPRM. The record clearly indicates that there will be detrimental effects on customers in rural areas as a result of the ICC reforms that have already been approved by the FCC, so implementing further reforms before those impacts can be fully assessed is irresponsible at best.

By our best estimates at this time, which continue to change regularly based on new information from industry organizations and consultants and additional information released by the FCC, ICC reform will negatively impact our company's revenues by *millions* of dollars over the transition period. Determining the true impacts of the adopted and proposed ICC reforms on our one individual company is nearly impossible at this time due to the high level of complexity

[2] *Initial Comments of the National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and the Western Telecommunications Alliance on Sections XVII.L-R (Intercarrier Compensation Issues)* submitted February 24, 2012.

and "moving parts." Predicting and planning for the impacts on customers nationwide, therefore, is a daunting task at best, and one that will take more than a matter of weeks or months to fully flesh out. Like many Commenters, Mid-Rivers strongly urges the FCC to **establish true pause points along the path to ICC reform that allow for adequate review and consideration of the impacts on the ability of rural companies to continue providing our customers with affordable, quality voice services and to meet their escalating broadband service needs.**

Our company serves an extremely rural and remote area, and the largest geographic area of any telecommunications cooperative in the Continental U.S. These factors make it necessary for us to carefully and extensively review each and every investment, as the impacts in our extremely rural service area of a poor investment decision can be exponentially greater for our customers than they would be in a more densely populated area. The decisions the FCC is making right now directly affect every American consumer, from those in metropolitan areas to the farmer living 50 miles from the nearest town, **and therefore must be carefully and extensively reviewed and re-assessed periodically to prevent harmful impacts that are only compounded as each additional reform is implemented.**

B. *The Order recognizes the difference between rural and other CLECs, yet does not account for these differences by providing rural CLECs with a cost recovery mechanism for replacing even a portion of any lost access revenues*

The FCC in its *USF/ICC Transformation Order* recognizes that there is a difference between rural and non-rural CLECs by referencing the "rural exemption" provision of the CLEC Access Charge Order.[3] The rural exemption permits rural CLECs to "benchmark" to the access rates of the NECA tariff, assuming the highest rate band for local switching. **This rural exemption was designed to address the recovery of high costs in areas where rural CLECs serve.**

The FCC uses the rural exemption as a basis for allowing rural CLECs that qualify for the rural exemption under Section 61.23(e) and that use NECA switched access rates to follow the same nine-year ICC transition period afforded to rural rate-of-return carriers.[4] Later in the same

[3] See *USF/ICC Transformation Order*, Para. 807.
[4] See *USF/ICC Transformation Order*, Para. 801.

Order, however, **the FCC fails to recognize these same rural CLEC cost recovery needs by declining to provide an explicit recovery mechanism for rural CLECs to replace even a portion of the access revenues that will be lost in the ICC transition.**[5]

Rural CLECs like Mid-Rivers who have committed to serving high-cost areas, and do not provide service to any non-rural areas, should have an opportunity to continue to recover at least a portion of the revenues that we currently receive from rural CLEC access charges. Our rural CLEC is nearly as reliant on access charges as our RLEC operation, with ICC making up a significant portion of our CLEC revenue stream. There must be a meaningful revenue recovery mechanism for **<u>all</u>** types of rural carriers **to ensure a smooth transition that will not shift an unbearable portion of network support costs onto the backs of rural consumers**. Without access to a CLEC recovery mechanism to replace millions in lost access revenues – revenues that are critical to our on-going ability to meet customer voice and broadband needs in an affordable manner – Mid-Rivers may have no recourse than to substantially raise end-user customer rates.

Many if not all of the same concepts that apply to the cost recovery needs of RLECs can be applied in an identical fashion to the needs of *rural* CLECs serving customers in high-cost areas. In rural Montana, our CLEC operates very similarly to our ILEC, our CLEC customers are cooperative members, and our CLEC costs are very similar to our ILEC costs. The loss of millions of dollars in access charge revenue, with no path for recovering those costs other than from our end-users, will significantly harm our ability to recover our investments in areas where we are the only wireline broadband option today, or to continue building out additional broadband in these areas, which is directly contrary to the goals of the USF/ICC Reforms and the National Broadband Plan.

C. *Transitioning all rate elements to bill-and-keep will further harm the ability of Rural LECs and Rural CLECs to meet the broadband needs of our consumers and keep their local service rates affordable*

ICC is a critical revenue stream for Mid-Rivers' very rural RLEC and CLEC operations. ICC reform mandates and further changes proposed by the FNPRM will have very detrimental

[5] See *USF/ICC Transformation Order*, Para. 864.

effects on our ability to continue building out telecommunications infrastructure in our Montana RLEC and CLEC exchanges. **Approving further phase-downs of other ICC rate elements, even before the terminating access transition has *begun*, is premature and dangerous for rural consumers.**

Mid-Rivers continues to attempt to determine how the ICC reforms already approved will affect our end-user customers and our company's ability to meet those customers' needs in an affordable manner going forward, but as stated earlier the extreme complexity of these reforms makes it nearly impossible for us to confidently estimate the effects on our company. As the Rural Associations state in their Comments, "The FCC should not compel any migration to bill-and-keep for additional switched service rate elements until it has had time to evaluate the reforms already made and address several significant complexities related to additional reforms."[6]

The Rural Associations also accurately state that "the 'end state' of bill-and-keep identified by the Commission…provides a free ride to other service providers that profit substantially from their access to and use of the 'last mile' network. This places greater upward pressure on the two remaining sources of RLEC cost recovery: end-user rates and high-cost USF support."[7] This is also applicable to rural CLEC cost recovery, with the exception that high-cost USF support will no longer be available to rural CLECs which therefore leaves end-user rates as the only remaining source of recovery.

D. *Further USF Distribution and ICC reforms are premature until the FCC addresses USF contribution reform*

Before implementing any further USF distribution or ICC reforms, the FCC must proceed with reforming the USF contribution mechanism, rather than capping all cost recovery at an artificial and self-imposed fund size limit based on outdated contribution methodologies. **The**

[6] *Initial Comments of the National Exchange Carrier Association, Inc.,* et al*, on Sections XVII.L-R (Intercarrier Compensation Issues)* submitted February 24, 2012, at Page 9.
[7] *Initial Comments of the National Exchange Carrier Association, Inc.,* et al*, on Sections XVII.L-R (Intercarrier Compensation Issues)* submitted February 24, 2012, at Page 11.

existing contribution system based on the interstate revenues of phone companies must be modernized for a broadband network environment.

Today there is an **economic disconnect between the broadband cost-causers and those who pay to support the network**. Application and content providers use the broadband transport facilities and the local broadband distribution plant of rural carriers, requiring us to provide high-quality, high-bandwidth, and therefore high-cost service, and **they profit substantially from our networks without contributing to their support**. The public interest requires contribution reform to ensure that the network cost-causers are contributing their fair share based on the value of these broadband connections to their operations. It is logical that broadband content and application providers generating large loads of traffic on the broadband network should bear some of the cost of building and maintaining these broadband networks, and also of keeping additional capacity resources available for the peak periods when their applications are stressing the network.

Continuing to push reforms to the distribution side of the equation without addressing the source and amount of the money coming in is not a logical approach. Those using and benefitting from the broadband network should be contributing to its support, rather than leaving the users of the legacy network to fully support an advanced network from which non-contributors are allowed to profit substantially. The FCC must address the ***contribution*** side of the USF equation and **should NOT automatically assume that the overall size of the Fund cannot grow**.

If structured correctly, a modernized Universal Service program can allow us to put the needs of the rural consumer first, fully funding ubiquitous broadband deployment with both the speeds and mobility vital to economic recovery and job creation in rural America.

RESPECTFULLY SUBMITTED,

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